IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

OP.No. 31382 of 2002(K)

PETITIONER:

K.SUDHAKARAN,
SENIOR GRADE ASSISTANT,
AGRICULTURE (PU) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.RESMI G. NAIR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. PRINCIPAL SECRETARY TO GOVERNMENT,
HOME AND VIGILANCE DEPARTMENTS,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. SURARSHAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT, ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF GOVT. ORDER DT. 1-7-1996.

EXT.P2 MEMO OF CHARGES DT. 10-5-1999.

EXT.P3 EXPLANATION DT. 7-6-1999.

EXT.P4 ADDL. WRITTEN STATEMENT DT. 23-11-2000.

EXT.P5 SHOW CAUSE NOTICE DT. 20-1-2001.

EXT.P5(a) ENQUIRY REPORT OF VIGILANCE TRIBUNAL.

EXT.P6 REPLY DT. 20-1-2001.

EXT.P7 ORDER DT. 30-4-2002.

EXT.P8 OFFICE ORDER DT. 23-9-2002.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 31382 of 2002

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Dated this, the 19th January, 2007.

J U D G M E N T

Disciplinary proceedings were initiated against the petitioner in this case, while working as Selection Grade Assistant in the General Education Department of the Government of Kerala. Ext.P2 memo of charges was issued. His explanation was obtained. Vigilance Tribunal conducted an enquiry. The Vigilance Tribunal, after taking evidence, submitted Ext. P5(a) report finding the petitioner guilty of the misconducts alleged against him and recommended the punishment of penalty of reduction to the lower post for a period of 5 years on the petitioner. The enquiry report was forwarded to the petitioner under cover of Ext. P5 show cause notice calling upon him to show cause why the provisional decision arrived at by the Government to accept the report of the Vigilance Tribunal should not be confirmed. The petitioner filed a detailed explanation, Ext. P6. The same was considered by the Government and the Government passed Ext. P7 order wherein they declined to accept the contentions of the petitioner against the report and confirmed the penalty of reduction to the lower post for a period of five years, which was imposed on the petitioner. Consequent on Ext. P7 order, Ext. P8 order has been passed by the Government implementing Ext. P7 decision. Exts. P7 and P8 decisions are challenged in this original petition.

2. The petitioner challenges the orders on two grounds. First is that before coming to the provisional conclusion to accept the enquiry report and recommendation of the Tribunal, the petitioner was not given a copy of the report with an opportunity to show cause why that provisional decision should not be taken. The second is that the findings of the Vigilance Tribunal in Ext. P5(a) is not supported by evidence adduced in the enquiry conducted by the Tribunal.

3. Regarding the first contention, I do not think that there is any procedure contemplated under law whereby the petitioner has to be given a show cause notice as to why a provisional decision should not be taken. On the other hand, what the law contemplates is to give the petitioner an opportunity to show cause before a final decision is taken, which is abundantly satisfied by Ext. P5 show cause notice. Along with Ext. P5 show cause notice, Ext. P5(a) report of the Vigilance Tribunal was also forwarded to the petitioner calling upon the petitioner to show cause why the provisional decision should not be confirmed. The petitioner had in fact filed a detailed explanation Ext. P6 and a a reading of Ext. P7 would show that that explanation was also taken into consideration while confirming the provisional decision. I do not find any irregularity in the procedure adopted by the Government in this regard. In any event, the petitioner has not successfully proved before me that because of the procedure adopted, he has suffered any prejudice. It is settled law that prejudice has to be shown in the matter of challenging disciplinary proceedings on the ground of violation of principles of natural justice particularly on the ground of non-supply of copy of enquiry report. As such, I do not find any merit in the contention raised by the petitioner against the procedure adopted by the respondents in the matter of imposing the punishment on the petitioner especially in the absence of any allegation of violation of principles of natural justice in the matter of conducting the enquiry by the Vigilance Tribunal.

4. The second contention of the petitioner is that since the disciplinary proceedings essentially related to an application for housing loan submitted by the petitioner's father before the Kollam Development Authority for which the petitioner stood as a surety, apart from which he had no connection whatsoever with that

transaction, no misconduct could have been found against the petitioner. He would submit that the findings in Ext. P5(a) report of the Vigilance Tribunal are based only on surmises and conjectures and not on the basis of any evidence on record.

5. I have heard both sides in detail.

6. The charges levelled against the petitioner is contained in Ext. P2 which reads as follows:

> THAT YOU, Sri. K. Sudhakaran, S/o. Kesavan, while working as Selection Grade Assistant, General Education (F) Dept. Govt. Secretariat, TVM during 1992-93 with the active connivance of your father Sri. Kesavan, Kunnathuvilayil veedu, Mundrothuruth, Kollam who expired on 29.12.96 forged the salary-cum-non-liability certificate in respect of a fictitious employee by using the the seal of that office and forged the signature of the Asst. Director of Calf Feed subsidy scheme, Kollam and produced as genuine, for availing a house loan of Rs. 94,800/- applied in the name of your father Sri. K. Kesavan and cheated the Development Authority by not making any construction in your property as mentioned in the statement of allegations;
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> That you, while working as above, remitted back the entire loan amount and received back the original salary cum non liability certificate from the Kollam Development Authority, Kollam and destroyed it with the intention of causing the evidence of forgery to disappear as mentioned in the statement of allegations;
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> That you, while working as above, falsely introduced a person to the clerk concerned and the Secretary of Kollam Development Authority as S. Pradeep Kumar, the employee mentioned in the salary certificate and thereby enabling the fictitious employee to sign the agreement on 3.10.92 as additional surety and you have also signed in the agreement as the first witness as mentioned in the statement of allegations;
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> That you, while working as above managed to obtain a house loan of Rs. 94,800/- from the Development Authority, Kollam in favour of your father as the first, second and third instalments of the loan and thereafter no construction was made in your property and thereby obtained the pecuniary advantage of the above sum as mentioned in the statement of allegations;

By your commissions and omissions you have failed to maintain absolute integrity and devotion to duty."

The Vigilance Tribunal, in paragraphs 7-11 and 7-12 report discussed the evidence as follows:

"7-11. PW2 is the authority who had sanctioned the loan in her capacity as the Secretary of the Development Authority. She would swear that the loan application and the connected documents were produced by the accused officer himself. PW3 has corroborated the above version when he deposed that the accused officer also was present at the time of the execution Ext. P3(d), which is the additional security bond purported to be executed by S. Pradeepkumar. His further evidence is that a person was introduced by the accused as Pradeepkumar, the additional surety at that time. In support of its contention in this regard, the prosecution is pointing out the production of several documents connected with the loan by the accused officer from the time of the application till the repayment of the same in lump. Even though the defence would deny the production of the original of Ext. P1, there is no dispute that Exts. P3(k), P3(q) and P3(n) are written and produced by the accused officer himself. Ext. P3(k) is an application requesting the sanction of the 3rd instalment of the loan. Ext. P3(q) is another application requesting to allow him to remit back the loan amount in 10 instalments. In this connection, it is to be noted that on account of the failure of the loanee to utilise the loan amount properly, the Kollam development Authority vide their letter No. 7548 dated 23.11.1992 which is seen on page 27 of Ext. P3 demanded the loanee to remit back the loan amount of Rs. 94800/- in lump with interest. In Ext. P3(q) letter to the accused officer has stated as follows:

"Kindly pardon me once again for the untimely reminiscence of past events."

The above letter concluded with the following prayers:

"In such a pathetic situation you may be aware it is hardly possible to remit the amt in lump sum by a poor man like me. Therefore, in order to avoid a remedy that is worse than the disease, I kindly request you to grant me ten quarterly instalments to repay the amount fully for which act of kindness I will ever be grateful to you."

Thus Ext. P3(q) letter itself is sufficient to show that the entire transaction was directly dealt with by him. Ext. P3(n) is an affidavit sworn to by the accused officer owning full responsibility of availing the loan and agreeing to remit back the amount before 30.9.1999. Ext. p3(n) is apparently filed in

> pursuance of the demand of the Development Authority for remitting back the loan amount in lump. The accused officer has now come forward with a contention that Ext. P3(n) was obtained by the officials of the Kollam Development Authority with a view to implicate him in the loan matter. The reason for the alleged attempt to implicate him is not stated by him. Further such a contention is not there in his written statement of defence. This would show the lack of bona fides on the part of the accused officer in raising such a contention. The inconsistency in the defence version also is brought to light. Considering the previous and subsequent conduct of the accused officer, it can safely be concluded that ext. P3(n) was voluntarily filed by the accused officer.
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> 7-12. The accused officer is seen to have signed as a witness in ext. P3(d). This aspect is not denied by him. As already stated, PW3 the section clerk categorically stated that the accused officer was present at the time of its execution and that he came there in the company of a person who was introduced him as S.Pradeepkumar. There is no need to disbelieve this witness when he states that the same was executed in his presence. It is contended by the accused officer that his signature was obtained in Ext.P3(d) at his residence by a brother and that in addition to him his servant girl by name Sheela also signed as a witness therein. The only witness who supports him in this regard is PW& who is none other than his own wife who cannot be expected to speak against him. In the absence of any independent evidence the defence version in this regard can only be discarded. It is contended by the defence that the accused officer comes to the picture only at the time of filing Ext.P3(k) application and that too on account of the illness of his father who was the actual loanee. As already stated above, the evidence of Pws 2 and 3 reveals the role of the accused officer from the beginning stage of the loan transaction. The subsequent conduct of the accused officer in filing Ext.P3(k), P3(p) and P3(q) is a strong circumstance providing corroboration to their evidence. Hence it is established beyond doubt that the original of Ext.P1 which is the forged salary-cum-non liability certificate was produced and the fictitious person mentioned therein was produced as additional surety to the loan by the accused officer himself as a result of which he obtained the 3 instalments of the loan amounting to Rs.94800/-. Therefore these point are found in favour of the prosecution."

A mere reading of the above conclusions leaves no room for any doubt whatsoever regarding the fact that the findings of guilt entered against the petitioner by the Vigilance Tribunal has been based on

sufficient legal evidence adduced in the enquiry. I do not find anything to discredit such findings much less to find any perversity in the findings which alone would give me jurisdiction to interfere with such findings. It is settled law that sufficiency of evidence is not a matter which could be considered by this Court while dealing with challenge against disciplinary proceedings. That being so, I do not find any merit whatsoever in this original petition and accordingly the same is dismissed.

Sd/- S. Siri Jagan, Judge.

Tds/